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09-10-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #73

IN THE UNITED STATES PATENT AND TRADEMARK OF
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant: Baby Björn AB

Serial No.: 75/751554

Trademark: Design of Baby Carrier

Examiner: Nicholas K.D. Altree, Esq.

Law Office: 108

Filing Date: July 15, 1999

Attention: Karl Kochersperger, Esq.
United States Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3514

APPLICANT'S APPEAL BRIEF

The Examiner has refused trademark registration of Applicant's product design under Trademark Act § 2(e)(5) on the ground that the mark is functional and under Trademark Act §§ 1, 2 and 45 on the ground that the mark is a non-distinctive configuration of goods. Applicant has appealed the Examiner's refusal and submits that Applicant's product configuration embodies a nonfunctional design which has acquired distinctiveness as a trademark.

FACTS

Applicant filed its application covering "baby carriers" on July 15, 1999 based on use in U.S. commerce since July 4, 1991. On November 10, 1999, Examiner Sue Carruthers issued an Office Action refusing registration on the Principal Register on the ground that the mark is functional and comprises a product

configuration which is not inherently distinctive. The Examiner suggested amendment of the application to the Supplemental Register and also requested clarification of the identification of goods as "soft baby carriers worn on the body". On May 10, 2000, Applicant filed a Response setting forth arguments and evidence against the refusal and providing evidence in support of arguments that the product configuration is at most *de facto* functional. Applicant also addressed the Examiner's informal requirements.

On July 31, 2000, the Examiner issued an Office Action requesting additional information regarding Applicant's mark and goods, including promotional or explanatory materials, a statement identifying non-functional elements of the product design, photographs of alternative designs used by third parties, and information relating to any U.S. patents concerning the covered goods. Applicant filed a Response on January 31, 2001 providing the requested information and including a declaration asserting acquired distinctiveness based on use in U.S. commerce for more than five years. Applicant also identified the overall shape of its product configuration and vertical stripes on the product front as the source identifying features for which trade dress protection is claimed.

On May 31, 2001, the Examiner issued another Office Action refusing registration on the ground that the mark is "de jure

functional" and noting the functional aspects of product features including straps and buckles used Applicant's carriers. The Examiner also withdrew her recommendation of registration on the Supplemental Register and requested a certified copy of Applicant's corresponding Swedish registration and copies of any relevant U.S. patents. Applicant responded on November 30, 2001, submitting arguments against the Examiner's conclusion that the product design is wholly functional and providing the requested certified copy of Applicant's Swedish Registration No. 337,347 and copies of U.S. Patent Nos. 5,732,861 and 5,490,620 relating to certain elements of Applicant's baby carriers.

On April 24, 2002, Examiner Catherine K. Krebs issued a Final Office Action continuing the previous Examiner's refusal of the mark as functional and non-distinctive. The Examiner highlighted portions of Applicant's U.S. patents which she deemed evidence of functionality. The Examiner also stressed that her refusal was based on the mark as contained in the application, noting that the drawing and description of record did not clearly disclaim those portions of the baby carrier design not claimed as a trademark.

Applicant submitted a Notice of Appeal on October 24, 2002, along with a Request for Reconsideration. In addition to further arguments and evidence in support of the design's registrability and acquired distinctiveness, Applicant submitted a clarified

drawing of the mark, a copy of which is attached hereto as Exhibit A. Applicant also inserted a description of the mark as follows:

> "The mark comprises the configuration of a flared, kite-shaped outside front panel of a baby carrier and two vertical stripes placed thereon. The portions of the drawing shown in dotted lines are not part of the mark but are merely intended to show the position of the mark."

On July 2, 2003, Examiner Nicholas Altree issued a one-page Office Action denying Applicant's Request for Reconsideration on the ground that the Request presented no new facts worthy of consideration.

ARGUMENTS

1. The Examiner has refused registration on the ground that Applicant's product configuration is functional under Trademark Act § 2(e)(5). The refusal appears to be based primarily on a review of Applicant's U.S. Patent Nos. 5,490,620 and 5,732,861 and an interpretation of the U.S. Supreme Court's opinion in TrafFix Devices, Inc. v. Marketing Displays, Inc., 532 U.S. 23 (2001). The Examiner's analysis misinterprets the nature of both the Applicant's patents and its mark and results in a conclusion contrary to established U.S. trademark law.

A. It is well established that a product configuration can be protected under federal law. In particular, the design of a product may acquire a distinctiveness which serves to

identify the product with its manufacturer or source. A design which acquires this secondary meaning, and meets other requisites, is a trade dress which may not be used in a manner likely to cause confusion as to the origin, sponsorship, or approval of the goods. TrafFix Devices, Inc. v. Marketing Displays, Inc., 532 U.S. at 28.

Trade dress protection is not available to product configurations that are functional as a matter of law, or de jure functional. Under the "traditional rule", a product feature is functional as a matter of law if it is "essential to the use or purpose of an article or it affects the cost or quality of the article." TrafFix, 532 U.S. at 33 (2001), citing Inwood Laboratories, Inc. v. Ives Laboratories, Inc., 456 U.S. 844 (1982). Such de jure functional features are not recognized as trademarks since their exclusive use by one party would put competitors at a significant non-reputation-related disadvantage. Qualitex Co. v. Jacobson Products Co., 514 U.S. 159 (1995), quoted in TrafFix, 532 U.S. at 32 (2001).

However, the mere fact that a product feature is directed toward the performance of a function does not render its design unprotectable as a trademark. Instead, courts distinguish de facto functional features, which may be entitled to trademark protection, from de jure functional

features, which are not. Valu Engineering, Inc. v. Rexnord Corporation, 278 F.3d 1268, 1274 (Fed. Cir. 2002); In re R.M. Smith, Inc., 734 F.2d 1482, 1484, 222 U.S.P.Q. 1, 3 (Fed. Cir. 1984); In re Ennco Display Systems Inc., 56 U.S.P.Q.2d 1279, 1282 (T.T.A.B. 2000); In re Parkway Machine Corp., 52 U.S.P.Q.2d 1628, 1631 n.4 (T.T.A.B. 1999); T.M.E.P. § 1202.02 (a)(iii)(B).

As the Court of Appeals for the Federal Circuit observed: "De facto functional means that the design of a product has a function, i.e., a bottle of any design holds fluid. . . . De jure functionality, on other hand, means that the product is its particular shape [or design] because it works better in this shape." Valu Engineering, 278 F.3d at 1274; Brunswick Corp. v. British Seagull Ltd., 35 F.3d 1527 (Fed. Cir. 1994); In re R.M. Smith, Inc., 734 F.2d 1482 (Fed. Cir. 1984).

In light of this distinction, the first step the Examining Attorney must take in any trademark application involving a product configuration is a determination of the nature and degree of utilitarian functionality of the proposed mark, if any. In re Morton-Norwich Products, Inc., 671 F.2d 1332, 1338 (C.C.P.A. 1982)("[E]xamination into the possibility of trademark protection is not to the mere *existence* of utility, but to the *degree* of design

utility.").

The Federal Circuit has set forth four factors to be considered in determining whether a product design is de jure functional:

1) The existence of a utility patent that discloses the utilitarian advantages of the design;

2) Advertising materials in which the originator of the design touts the design's utilitarian advantages;

3) the availability to competitors of functionally equivalent designs; and

4) Facts indicating that the design results from a comparatively simple or cheap method of manufacturing the product.

In re Morton-Norwich Products, Inc., 671 F.2d at 1338; See also Valu Engineering, Inc. v. Rexnord Corporation, 278 F.3d at 1276 (acknowledging continued relevance of the Morton-Norwich analysis).

In its opinion in TrafFix, the U.S. Supreme Court clarified that a determination of functionality under the "traditional rule" does not necessarily require consideration of each of the four Morton-Norwich factors. Specifically, the Court held that where an expired utility patent clearly indicates that a particular configuration is functional, it is not necessary to consider whether alternative designs are available since functionality has already been established. TrafFix, 532 U.S. at 33.

Nonetheless, active or expired patents relating to a proposed mark remain only one source of evidence relevant to the question of functionality. The Federal Circuit has confirmed that the TrafFix decision did not alter the Morton-Norwich analysis and, as such, availability of alternative designs remains a legitimate source of evidence to determine whether a feature is functional in the first place. Valu Engineering, Inc. v. Rexnord Corporation, 278 F.3d at 1276.

Indeed, the Supreme Court cautioned in its TrafFix opinion that not all elements of a configuration described, depicted or claimed in a patent will support a finding of functionality:

> "In a case where a manufacturer seeks to protect arbitrary, incidental, or ornamental aspects of features of a product found in the patent claims, such as arbitrary curves in the legs or an ornamental pattern painted on the springs, a different result might obtain. There the manufacturer could perhaps prove that those aspects do not serve a purpose within the terms of the utility patent."

TrafFix, 532 U.S. at 34.

B. The TrafFix opinion concerned an attempt by Marketing Displays, Inc., to establish trade dress protection for the design of a wind-resistant sign stand which also was the subject of two expired utility patents. The sign stand design was distinguished by dual springs which provided

flexibility and permitted the signs to remain upright in windy conditions. In denying trade dress protection to the design, the Court noted that dual-spring design sought to be protected as a trademark represented the central advance claimed in the expired utility patents. TrafFix at 30. The Court also cited specific language from the patents supporting the advantages of the particular spring configuration for which MDI claimed trade dress protection. TrafFix at 31. In addition, the Court stressed MDI's successful efforts to enforce its patents against similar designs during their active terms. As such, the Court concluded that MDI's dual-spring design was clearly covered by the claims of its patents and the ability to exclude use of the design by others expired along the patents. TrafFix at 32.

In this case, Applicant provided the Examiner with copies of two utility patents relating to certain mechanical features of its baby carriers, copies of which are attached as Exhibit B. The Examiner, citing the TrafFix opinion, has incorrectly seized upon the patents as conclusive evidence of functionality of Applicant's entire product configuration and has refused to consider the availability of functionally equivalent designs to competitors under the Morton-Norwich analysis.

Unlike the expired patents discussed in the TrafFix opinion, Applicant's patents do not disclose any utilitarian advantages relating to the design feature for which trademark registration is sought. A careful reading confirms that the patent passages cited by the Examiner as evidence of functionality relate not to the shape of the carrier flap but to the clasp mechanisms used to attach, remove and adjust the carrier. Applicant is not seeking trademark protection for the design of clasp mechanisms used in its baby carriers but to the combination of arbitrary curves and lines comprising its distinctive one-piece, kite-shaped flap design and distinctive front-panel stripes.

As noted in the "Background of the Invention" portion of Patent No. 5,490,620, the patent relates to certain functional connecting elements of a type of child-supporting harness already known in practice and typically distinguished by a "bag-like" support flap worn on the chest-side of the wearer whereby "the arms and legs of the child supported thereby will essentially straddle the body of the wearer". See Patent No. '620, page 5. The drawbacks sought to be addressed by the patent are the ease with which a sleeping child may be removed from such a carrier, the ease with which a child may be placed in or removed from the harness while it is being worn, and the tendency of shoulder

straps to slide from their desired position during operation. Id. at page 5. Similarly, the Background and Summary discussions in Patent No. 5,732,861 reveal the object of the patent to be the adjustability and comfort of the fastener clasp connecting the pouch element of front-type carriers to the carrying harness. See Patent No. '861 at page 5. In either instance, the front portion of the carrier is identified generically as a pouch or flap whose shape is neither described nor dictated by the claims of the patents.

It is clear that the shape or use of Applicant's baby carrier flap design is not the subject matter of or central advance claimed in its two patents. It is also obvious that Applicant's patents do not establish exclusionary rights in the idea of a soft, frontal baby carrier employing a flap or pouch element. Indeed, Applicant's patents are among many issued by the U.S. Patent Office in connection with front-type baby carriers. Examples of coexisting patents obtained from the U.S. Patent & Trademark Office online database were previously placed in the application record as Exhibit B to Applicant's Request for Reconsideration. Notably, several of the referenced patents are "Design Patents". Since Design Patents are issued only for non-functional matter, the existence of such patents for soft baby carriers

confirms that the shape of such carriers may be considered non-functional.

C. Applicant's patents also do not reveal any particular utilitarian advantages to the specific shape of the support flap comprising Applicant's mark, and incidentally depicted in the patent illustrations.

In connection with Patent No. '620, the Examiner has observed that the patent describes advantages of convenience and comfort which improve upon prior art by permitting the child supporting pocket to be opened completely without removing the harness, thus enabling removal of a sleeping child. The Examiner also points out Claim Nos. 1-5, 8, 9, 11-13 as establishing "that the functional combination of a child-supporting flap and straps in combination form a child supporting pouch". The Examiner concludes that "the totality of these claims is equivalent to the configuration of goods presented for registration" as a trademark.

With respect to Patent No. 5,372,861, the Examiner also has stressed the incidental presence of Applicant's distinctive flap shape in patent drawings and generic claim references describing the manner in which the flap attaches to the carrier harness. The Examiner also points to the "Background of the Invention" section, which indicates the invention's benefits in both cost and adjustability.

The Examiner's analysis of both patents incorrectly focuses on the use and usefulness of Applicant's products and on irrelevant functional features not asserted as part of the subject trademark. The issue to be determined is not whether baby carriers are functional or how they are used, but whether the particular design of the flap portion of Applicant's baby carrier is functional as a matter of law, i.e., whether it is essential to the use or purpose of baby carriers or affects the cost or quality of baby carriers. J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 7:70 (4th ed. 2002), citing Disc Golf Ass'n Inc. v. Champion Discs, Inc., 158 F.3d 1002 (9th Cir. 1998).

The patent passages quoted by the Examiner merely state the obvious, i.e., that Applicant's baby carriers possess those elements necessary to function as baby carriers, including a front flap, straps and fastener elements. Such a mechanical analysis overlooks the Supreme Court's assertion in its TrafFix opinion that not all elements of a configuration subject to a utility patent serve a purpose within the terms of the patent. TrafFix, 532 U.S. at 34; See also Metrokane, Inc. v. The Wine Enthusiast, 160 F.Supp.2d 633,638 (S.D. NY 2001).

D. The Examiner also muses that the parallel, vertical stripes claimed as part of the mark are "probably the result

of reinforcement stitching" relating to the adjustment feature introduced in Patent No. '861. Final Office Action of April 24, 2002, page 3. Although the Examiner has made no effort to substantiate this theory, the deduction is clearly erroneous given that the parallel stripes appear in product drawings for the earlier-issued Patent No. '620, which does not depict the adjustment feature, and not in the product drawings contained in Patent No. '861.

There also is no mention in Patent No. '620 of any functional effect from the stripes which would support the Examiner's conclusion. Moreover, the dashed reference lines depicted in the figures for Patent No. '620 are plainly distinguishable from the arbitrary stripe elements actually used in the product configuration, which are intentionally conspicuous with a sole function of adding a characteristic, eye-catching element to the shape of the baby-carrier.

E. Given that the subject mark is completely separable and unrelated to any utilitarian advantages and features encompassed by the above-referenced patents, the TrafFix decision is not controlling or conclusive in support of refusal under Trademark Act § 2(e)(5). A more thorough analysis of employing the other Morton-Norwich factors is therefore appropriate in determining whether Applicant's product design is unregistrably functional. Valu

Engineering, Inc. v. Rexnord Corporation, 278 F.3d at 1276; Logan Graphic Products Inc. v. Textus USA Inc., 67 U.S.P.Q.2d 1470, 1473 (N.D. Ill. 2003).

With respect to the second Morton-Norwich factor, the Examiner has noted in passing that Applicant's advertising touts the advantages of its goods. In particular, the Examiner cites promotional references to "quick and easy to put on", "safe and snug head support", "wide padded straps", "padded neck rest" and ease of adjustment and use. Office Action of May 31, 2001, page 1. According to the Examiner, "these functional features are essential to the use and purpose of the goods and affect their quality". Final Office Action, page 4.

It is worth noting that the Examiner's statements were made in reference to Applicant's mark prior to clarification in its Request for Reconsideration. As indicated therein, Applicant's amended mark is limited to the arbitrary shape of the front flap element of its carrier. Accordingly, advertising claims concerning strap comfort, ease of baby removal and size adjustability are irrelevant to an analysis of functionality since such claims do not relate to the product feature for which trade dress protection is claimed. References to padding in the flap element also are irrelevant since the subject mark relates solely to the

aesthetic shape of the flap rather than its particular softness, thickness or material composition.

Similarly, isolated statements concerning particular design features such as "safe and snug head support" do not support a finding that the overall shape of the carrier flap is functional, particularly given the widespread availability of "head support" in competing product designs discussed below. Furthermore, Trademark Office policy states that a proposed configuration mark should not be dissected into its separate design features. Instead, a fair analysis must emphasize the overall design of the product or container. In re Teledyne Industries Inc., 696 F.2d 968, 217 U.S.P.Q. 9 (Fed. Cir. 1982); T.M.E.P. 1202.02(a)(iii).

F. More importantly, the Examiner has not properly considered the third factor under the Morton-Norwich analysis, namely, the numerous alternative product configurations available to consumers and competitors. As the Court of Appeals for the Federal Circuit has noted, "the effect upon competition is really the crux of the functionality inquiry". Valu Engineering, 278 F.3d at 1277, citing Morton-Norwich, 671 F.2d at 1341.

The existence of actual or potential alternative designs that work equally well strongly suggests that the

particular design used by the Applicant is not needed by competitors to effectively compete on the merits. However, the Examiner has thus far refused to compare differences in overall product shape between Applicant's products and those of third parties, and instead merely observes that "almost all baby carriers share common features such as: straps, adjustable buckles, head supports for new-borns, leg openings, arm openings, body supporting pouch, etc." Final Office Action page 4.

As indicated in Applicant's amended drawing, elements including straps and buckles are not claimed as part of the subject mark, as amended. Furthermore, the fact that products possess or share certain individually functional elements does not render the particular configuration of these elements unprotectable. Courts have not interpreted the TrafFix decision as precluding trademark protection for the combination or arrangement of functional features comprising a configuration. Coach, Inc. v. We Care Trading Co., Inc., 2001 U.S. Dist. LEXIS 9879 (2001)(stating that "a collection of functional features may nonetheless be protectable trade dress"); See also Clicks Billiards, Inc. v. Sixshooters Inc., 251 F.3d 1252 (2001)(holding that although a party cannot prevent others from copying purely functional aspects of a mark, it may "claim as its mark the

particular combination and arrangement of design elements that distinguish it from others using the same concept").

A common illustration of de facto functionality concerns the configuration of beverage bottles which clearly function to hold beverages. Such bottle designs typically employ a flat base permitting the product to stand upright, a tapered neck enabling controlled pouring, and an overall size and shape enabling comfortable and secure handling in one hand. Nonetheless, bottle configurations are commonly deemed protectable as trademarks.

Similarly, front type baby carriers by definition share certain elements necessary to the function of holding babies, including straps, a front flap or pouch, openings for arms and legs. However, the arbitrary manner in which these elements may be combined are no less numerous or protectable than those of other de facto product configurations.

Applicant has expended great effort creating a baby carrier which is visually distinct and reflects its heritage of classic Scandinavian design. The combination of a flared, kite-shaped panel and vertical stripes comprising Applicant's mark was purposely designed to complement parents' clothing and was created by a designer who has been called "the Dior of the baby business". Applicant regards

itself as the first to introduce such non-functional aesthetic emphasis into a baby carrier design.

In this regard, Applicant directs the Board to the more than 50 different examples of competing baby carrier designs attached to its Response dated January 31, 2001, none of which shares Applicant's particular flap shape or front-panel stripes. Given the wide variety of alternative designs available to competitors, Applicant's combination and arrangement of features plainly cannot be deemed essential to the use or purpose of Applicant's goods or as significantly affecting their cost or quality. See TrafFix at 1261; Logan Graphic, 67 U.S.P.Q.2d at 1473. Put another way, the Examiner has cited no evidence that Applicant's particular carrier flap design is required for effective competition in the front baby carrier industry. Rather, baby carriers existed well prior to the introduction of Applicant's products and continue to be introduced to consumers in new shapes and designs each year, often accompanied by claims of superiority over Applicant's products. However, Applicant's combination of design features continues to manifest an aesthetic identity separable from its underlying function and distinguishable from the numerous competing designs.

G. Lastly, the fourth Morton-Norwich factor concerns whether a product configuration results from a comparatively simple or cheap method of manufacturing the product. The Examiner has noted commentary in Patent No. '861 describing the cost benefits of a particular fastener element claimed in the patent. However, the Examiner has provided no such evidence relating specifically to the carrier shape which embodies Applicant's mark. In the absence of such evidence, this factor does not weigh in a determination of functionality. In re Gibson Guitar Corp., 2001 WL 1631369 (T.T.A.B.).

In sum, Applicant's configuration, as amended in the Request for Reconsideration, embodies a nonfunctional design capable of distinguishing Applicant's goods from those of competing designs. Accordingly, the Examiner's refusal of registration based on functionality of the product configuration should be withdrawn.

2. The Examiner has made final the alternate refusal of the mark as a non-distinctive configuration, stating that Applicant's more than ten years of use is insufficient to establish acquired distinctiveness. In particular, the Examiner contends that Applicant's product configuration cannot be considered distinctive, since it shares the same properties embodied in the baby carriers of others. According to the Examiner, consumers

are more likely to identify the source of the goods solely by the mark BABY BJÖRN, which appears on the carriers. Final Office Action page 5. For the reasons set forth below, Applicant asserts that the subject product configuration has acquired distinctiveness as a trademark among relevant U.S. consumers:

A. The Examiner's observation that Applicant's products share features in common with other baby carriers is irrelevant to the issue of acquired distinctiveness. If the test were whether a particular configuration shares features in common with a variety of third party configurations, then under the under the Examiner's analysis, trademark protection would be denied to virtually any de facto functional product configuration. As discussed above, however, courts have consistently held that a collection of product features which is unique to a particular configuration may, nonetheless, comprise protectable trade dress. Contrary to the Examiner's statements, Applicant has not claimed trademark protection in general for arm and leg openings, head supports, supporting pouches or other "properties embodied in the baby carriers of others". Instead, Applicant's mark comprises the particular configuration of these and other elements into a carrier flap shape which is unique in its market.

The fact that Applicant's name also appears on the identified baby carriers does not alter an analysis of acquired distinctiveness. As indicated by the specimens of use, the mark BABY BJÖRN is displayed on the goods in small letters which are unreadable from afar. In contrast, the overall shape of the baby carriers' front flap and contrasting dual vertical stripes are easily recognizable from a distance. Given their purpose and wearable nature, consumers are likely to pay particular attention to product design and appearance when choosing a baby carrier. As a result, it is reasonable to conclude that consumers can distinguish a particular manufacturer's baby carriers based solely on the configuration of the goods. This conclusion is supported by the evidence of record, including the following statement from an unsolicited consumer review:

> This now famous carrier has been touted in all the magazines of must haves. Easily recognizable as a brand name from afar the Bjorn certain looks attractive and comes in different color patterns.

See Request for Reconsideration - Exhibit C (emphasis added).

The Examiner goes on to acknowledge that "the only feature that could be viewed as unique to the applicant and perhaps capable of trademark significance may be the two vertical stripes of contrasting color. However, the

Examiner dismisses this line of reasoning by noting that "the two vertical stripes may be functional, and if not actually functional, the two stripes are clearly ornamental and not inherently distinctive." Final Office Action page 5. Conspicuous by its absence, however, is the Examiner's application of these observations to the issue at hand, namely, whether the stripe elements have acquired distinctiveness.

B. As indicated by the Examiner, Applicant bears the burden of proving secondary meaning. However, in meeting this burden of proof, applicant is only required to demonstrate that "a preponderance of evidence" favors its position. Yamaha International v. Hoshino Gakki, 840 F.2d 1572 (Fed. Cir. 1988). In order to meet this burden, Applicant need not present direct evidence of acquired distinctiveness. Instead, Applicant can carry its burden of proof by presenting circumstantial evidence that relevant consumers have been sufficiently exposed to the product configuration as to associate it with a single source. Yamaha, 840 F.2d at 1575; Roux Laboratories Inc. v. Clairol Inc., 427 F.2d 823 (C.C.P.A. 1970).

With this in mind, Applicant attaches as Exhibit C a copy of its previously submitted supporting affidavits attesting to use of the subject mark in U.S. commerce for

more than 12 years and sales of products bearing the claimed carrier flap configuration in excess of 576,000 units between 1992 and 2000. U.S. consumer advertising expenditures directly relating to Applicant's carrier design during this time exceeded $1.2 million.

Applicant also refers the Board to the following evidence previously made of record in its Request for Reconsideration in support of its claim of acquired distinctiveness:

1) Advertising and promotional materials touting Applicant's baby carriers. Applicant's advertisements consistently incorporate a prominent picture of its carrier flap design and intentionally promote the uniquely attractive visual style of the products as distinguishing the baby carriers from those of other manufacturers.

   See Request for Reconsideration - Exhibit E

2) Unsolicited third party references citing the attractive design of Applicant's baby carriers as a primary selling point, thereby distinguishing Applicant's baby carriers from those of other manufacturers.

   See Request for Reconsideration - Exhibit F

3) Unsolicited third-party professional and consumer references touting the popularity and quality of Applicant's baby carriers.

   See Request for Reconsideration - Exhibit G

4) Unsolicited third-party excerpts illustrating the high level of incidental exposure of Applicant's carrier design in popular consumer media.

   See Request for Reconsideration - Exhibit H

In his Office Action dated July 2, 2003, the Examiner did not acknowledge or respond to this evidence or otherwise explain his continued refusal. Nonetheless, Applicant reasserts that the referenced evidence illustrates both the high profile of Applicant's products in the relevant marketplace and consumer recognition of Applicant's carrier flap design as distinctive from that of other manufacturers and, in doing so, establishes by a preponderance of evidence the secondary meaning of Applicant's product configuration. As such, the refusal to register based on Sections 1, 2 and 45 of the Trademark Act, namely, that the mark is merely a non-distinctive configuration, should be withdrawn.

CONCLUSION

For the foregoing reasons, the refusals to register Applicants product configuration under Trademark Act § 2(e)(5) and under Trademark Act §§ 1, 2 and 45 should be reversed. Applicant respectfully requests return of jurisdiction in this matter to the Examining Attorney and an early notice of publication.

Respectfully submitted,
LADAS & PARRY
Attorneys for Applicant

Date: September 5, 2003

By: _____
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DZ:SMP:mk
Enclosures

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: United States Patent and Trademark Office Trademark Trial and Appeal Board 2900 Crystal Drive, Arlington, Virginia 22202-3513, on the date appearing below.

Melanie Kirkorian

September 8, 2003
Date

D R A W I N G

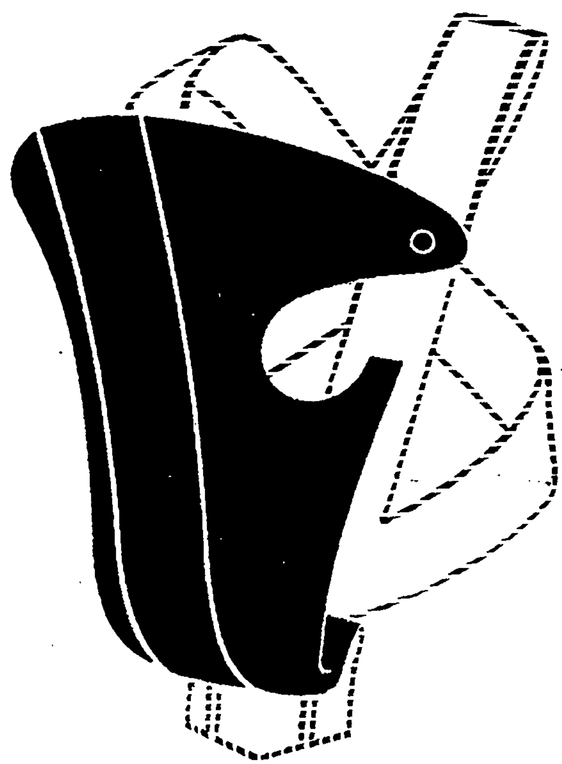
Applicant: Baby Bjorn AB
a corporation organized and existing under the laws of Sweden

Address: Lahallsvagen 48 A,
S-18330, TABY Sweden

DATE OF FIRST USE - May 1991 COMMERCE - July 4, 1991

BASED ON Sweden Application No. 99-00356 dated January 20, 1999, claiming Convention Priority.

GOODS: Baby carriers.



US005490620A

United States Patent [19]

Bergqvist

[11] Patent Number: 5,490,620

[45] Date of Patent: Feb. 13, 1996

[54] **CHILD-SUPPORTING SHOULDER HARNESS**

[75] Inventor: **Håkan Bergqvist**, Beckombergavägen, Sweden

[73] Assignee: **Baby Bjorn AB**, Stocksund, Sweden

[21] Appl. No.: **270,534**

[22] Filed: **Jul. 5, 1994**

Related U.S. Application Data

[63] Continuation of Ser. No. 956,767, Sep. 18, 1992, abandoned.

[30] **Foreign Application Priority Data**

Jan. 18, 1991 [SE] Sweden 9100160

[51] **Int. Cl.**[6] **A47D 13/02**

[52] **U.S. Cl.** **224/160**

[58] **Field of Search** 224/160, 159, 224/158

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Primary Examiner—Renee S. Luebke

Attorney, Agent, or Firm—Keck, Mahin & Cate

[57] **ABSTRACT**

A child-supporting harness includes two mutually connected looped straps which extend around both shoulder regions of the wearer, and a child-supporting flap. The flap is connected to the straps at the top and at the bottom region of its two sides, so as to form a child-carrying pouch. The connections between the straps and the upper part of the flap at both sides thereof can be released completely, so as to allow the whole of the flap to be dropped down and to be supported by its bottom connections with the straps. The bottom of the flap is fastened to the strap by means of releasable fasteners. The side edges of the flap are free.

13 Claims, 3 Drawing Sheets

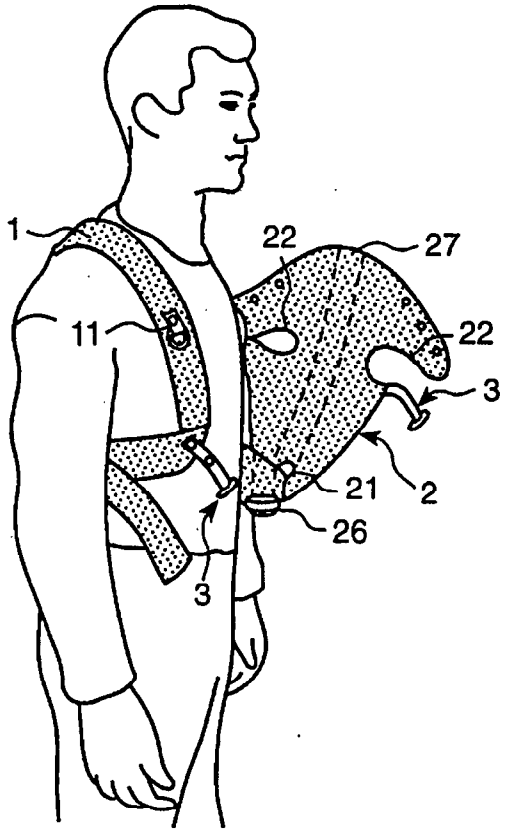


Fig. 1

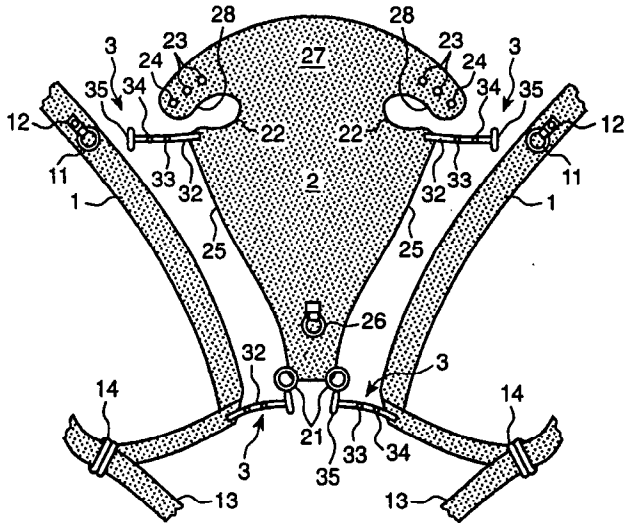


Fig. 2

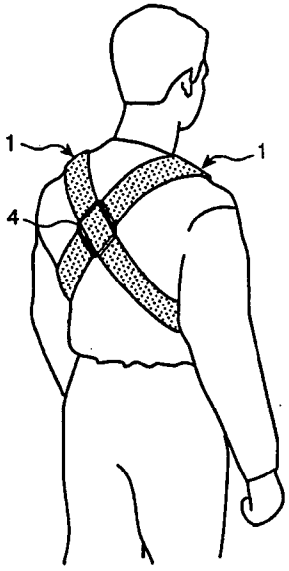


Fig. 3

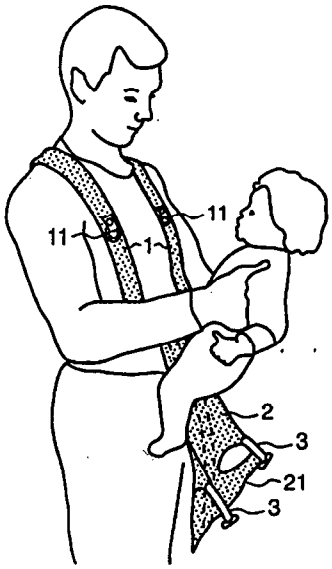


Fig. 4

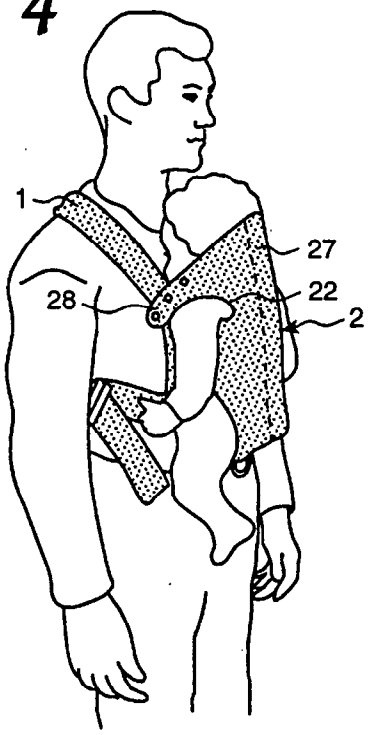


Fig. 5

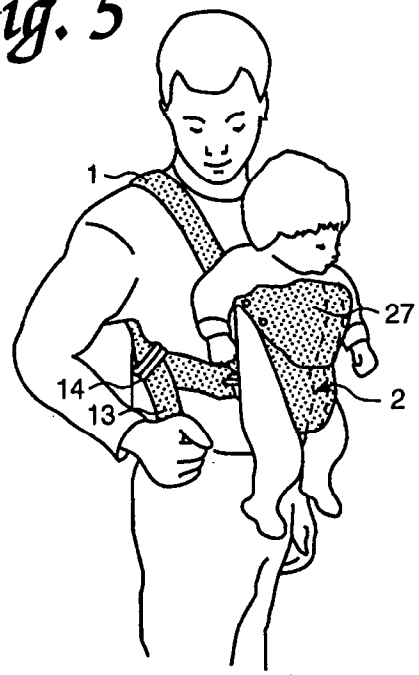


Fig. 6

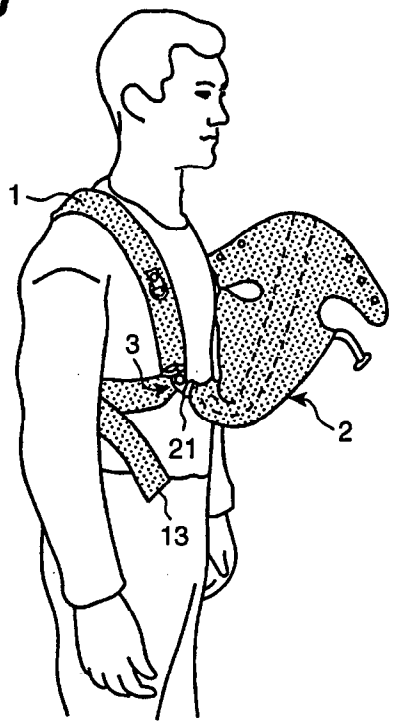


Fig. 7

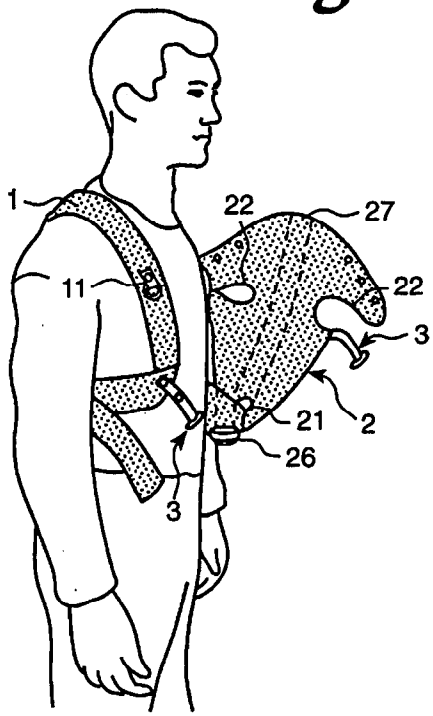


Fig. 8

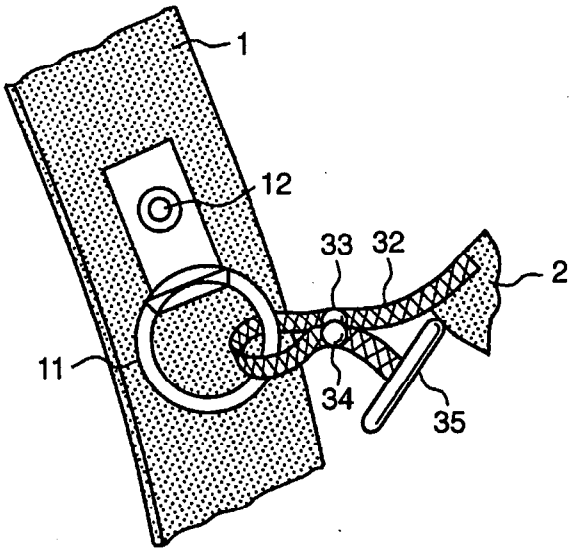
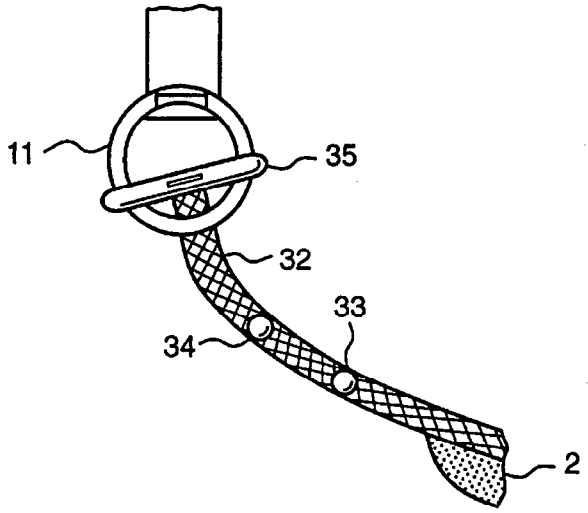


Fig. 9



CHILD-SUPPORTING SHOULDER HARNESS

This is a continuation application of Ser. No. 07/956,767, filed on Sep. 18, 1992 and now abandoned.

FIELD OF THE INVENTION

The invention relates to a shoulder harness of the kind which includes two mutually joined and looped straps which extend around both shoulder regions of the wearer, and a supporting flap which is joined along both sides thereof to the bottom region and to the upper region of respective looped straps such as to form a child-carrying pocket or pouch.

BACKGROUND OF THE INVENTION

Child-supporting harnesses of this kind have long been known to the art and are available in many different configurations. The present invention, however, relates particularly to that type of harness with which the arms and legs of the child supported thereby will essentially straddle the body of the wearer.

A child-supporting harness of this kind, known in practice, is constructed to support the child on the chest-side of the wearer and the harness normally includes a bag-like support which is firmly joined to two looped harness straps, one for each shoulder, over substantially the whole of its vertical extension on the rear side of the bag. The bag is provided with leg openings through which the legs of the child extend at the bottom of the bag, and the bag can be opened along one side edge thereof, so as to enable a child to be placed easily in and removed from the bag. The looped straps are provided with openable locking devices in the region where the straps are joined to the bottom part of the bag, and means are provided whereby the length of the straps can be adjusted, although in practice not while the harness is worn. This type of harness has no means whereby the two looped straps can be joined together at the back of the wearer.

This known child-supporting harness, which can be said to constitute the standpoint of techniques in relation to the present invention, is encumbered with a number of drawbacks. For example, it is difficult to transfer a sleeping child from the harness to a bed, without waking the child. Furthermore, it is difficult to place a child in the harness and to remove a child therefrom while the harness is worn by the wearer. The carrying safety of such a harness is also relatively low, since the looped straps tend to slide over the wearer's shoulders. Any strap securing device provided on the rear side of the harness between the looped straps would be difficult and troublesome to manipulate.

SUMMARY OF THE INVENTION

An object of the present invention is to provide a child-supporting shoulder harness with which the aforesaid drawbacks are eliminated, either completely or partially, so that a sleeping child can be transferred from the harness to a bed with the minimum of disturbance, while maintaining the carrying safety of the harness at a high level, and with which a child can be readily placed in and lifted from the harness while the looped straps of the harness are in position on the wearer and intact.

The inventive harness thus comprises two mutually joined looped straps which extend around both shoulder regions of the wearer, and a child-support flap which is connected at both sides thereof to the bottom region and the top region of respective straps, such as to form a child-supporting pocket, the fastening connections between the strap loops and the upper part of the support flap at both sides thereof being completely releasable so as to enable the whole of the support flap to be lowered around the fastener means which connect the flap-bottom to the straps, at least one of the looped straps being releasably fastened to the support flap, so as to enable the harness to be removed and placed in position easily, even when the straps are mutually connected on the rear side of the harness.

Because the child-supporting pocket can be opened completely by dropping the support flap and thereby completely exposing the child, there is less need to remove the whole of the harness, or conversely to put on the whole of the harness, and the carrying safety of the harness can be enhanced by mutually connecting the straps on the rear side of the wearer.

In order to make the harness more comfortable, the straps are preferably arranged to cross one another in the region where they are connected on the rear side of the harness.

According to one embodiment of the invention, at least some of the releasable fasteners of connections between the looped straps and the support flap are each formed by a strip of material or band, on the one part and a ring on the other part, wherein the band has two separate press-stud fastener components which together form a press-stud connection for securing a band-loop engaging through and around the ring, and wherein the free end of a band has a button-like means, preferably of oblong shape, which prevents or impedes unintentional withdrawal of the band through the ring. This arrangement simplifies both the establishment and the release of said connections. The button means, referred to hereinafter as a toggle, forms a handgrip which facilitates release of the press-stud connection, by pulling on the toggle. When fastening the upper part of the support flap to the looped straps, the toggle may first be inserted into the rings and the press-stud connection then established. Should a press-stud connection be released unintentionally, the coaction of the toggle with the ring will provide a backup connection which prevents complete release of the connection.

BRIEF DESCRIPTION OF THE DRAWINGS

The invention will now be described in more detail with reference to an embodiment thereof at present preferred, illustrated in the accompanying drawings, in which

FIG. **1** illustrates schematically from above the front part of an inventive child-supporting shoulder harness, said harness being shown separated at the connections between its main components;

FIG. **2** illustrates the rear part of the harness when worn;

FIG. **3** illustrates schematically how a child is placed in the harness while the harness is worn;

FIG. **4** illustrates a child placed in the harness facing the wearer.

FIG. **5** illustrates a child placed in the harness facing away from the wearer.

FIG. **6** illustrates the inventive harness with the supporting flap open along one side thereof;

FIG. **7** illustrates the inventive harness with the looped straps mutually released on the front side of the wearer;

FIG. **8** is a broken view of a fully established connection between the supporting flap and one looped strap; and

FIG. **9** is a view of a partially established connection.

DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS

FIG. 1 illustrates the outwardly facing side of the inventive harness, wherein only those parts of the harness which are located on the chest side of the wearer are shown and wherein the main harness components, the looped straps 1 and the supporting flap 2, are shown separately.

It will be seen from FIG. 2, that the looped straps 1 extend around the shoulder regions of the wearer and are mutually connected at the rear by means of a fastener connection 4.

The looped straps can be adjusted by means of a conventional adjuster 14, which enables one end 13 of the strap to be pulled so as to shorten the loop.

The supporting flap 2, the chest of the wearer and the means connecting the flap to the straps 1 define a child-carrying pocket, said supporting flap being releasably connected to the two straps 1. Provided at the bottom part of the flap 2 are two rings 21, and the looped straps 1 are provided with respective bands or strips 32 which have two separate press-stud elements 33, 34 capable of coacting mutually to form a press-stud fastener. Provided on the free end of the band 32 is a toggle which is connected to the band midway along its length. The extension of the toggle 35 is greater than the diameter of the ring 21. The toggle is passed through the ring 21 and the band 32 is folded back upon itself and the fastener elements 33, 34 pressed together.

A corresponding fastener element 3, comprising a band 32 having two separate press-stud elements 33, 34 and a toggle 35 at the end of said band, is provided on each side of the upper part of the supporting flap 2. The toggle is intended to coact with a ring 11 which is connected to the top of a respective looped strap.

The supporting flap 2 has free side edges 25 in the region between the fastener devices 21, 32, i.e. the side edges 25 of the flap are not connected to the straps 1.

As will be seen from FIG. 1, a central ring 26 is connected to the flap 2 at a level above the position at which the rings 21 and the ring 26 coact with the two lower fastener devices 3, so as to restrict the depth of the pocket partially defined by the supporting flap 2, in those instances when the child concerned is a small infant.

The supporting flap 2 has a neck-supporting part 27 in the region above the point at which the fastening devices are attached to the straps 1. The side edges of the flap 2 are provided with recesses 22 through which the arms of the child extend in a region immediately above the fastening devices 3. The two sides 28 of the neck-support part 27 are provided with respective fastening devices 23, 24. The attachment of the ring 11 of the strap 1 is shown to be provided with a press-stud device 12 which is able to coact with one of the press-stud devices 23, 24 to form a press-stud fastening.

Thus, in one configuration of the inventive harness, one of the fastener devices 23 can be connected to the fastener device 12 so as to stabilize the neck-support part 27 through connection with the looped straps 1.

In another configuration, used when the child is placed in the harness in a forward-facing position, as illustrated in FIG. 5, the neck-support part 27 can be folded down onto the lower part of the supporting flap 2 about a line which connects the side recesses 22, wherein the press-stud devices 24 are fastened to the press-stud devices 12, so as to hold the part 27 in its downwardly-folded position. In other cases, it is normally desirable for the supporting flap 5 to have a given degree of stiffness so as to hold the neck-supporting part 27 upright.

As will be seen from FIG. 8, the actual connection between the band 32 and its ring, e.g. the ring 11, is established by passing the toggle 35 through the ring and pressing the press-studs 33, 34 into one another. The toggle 35 forms a handle which enables the press-stud devices 33, 34 to be readily separated, thereby facilitating release of said fastener connection. The toggle 35 also functions to prevent the connection from being fully released unintentionally, as illustrated in FIG. 9. This partially accomplished connection can also be said to constitute a primary stage in the establishment of a complete fastener connection, in which the toggle 35 is passed through its respective ring 11 in conjunction with fastening the upper part of the supporting flap 2 to its respective looped straps with a child placed in the harness, wherein the press-stud connection 33, 34 is established after fitting the toggles 35 into the rings 11.

As shown in FIG. 3, the supporting flap 2 can be dropped down so as to hang by its lower fastening means 3, 21; 3, 21, or lifted up around said lower fastening means, and the two upper side parts of tale flap 2 connected to the rings 11 by means of the illustrated fastener arrangement. As illustrated in FIGS. 4 and 5, the child may be seated either facing the wearer or facing away therefrom, with the neck-support part 27 of the child-supporting flap 2 either folded up or folded down, as appropriate.

As will be evident from FIG. 6, only one of the upper fastening connections between the flap 2 and its looped strap need be held open when placing a child into or removing a child from the harness, and consequently only one connection 3, 11 need be established in order to safely hold the child in the harness.

As shown in FIG. 7, the wearer is able to remove the whole of the harness in the manner of a jacket by also releasing the connection 3, 21 when starting from the harness state illustrated in FIG. 6.

The invention has been described in the aforegoing with reference to a preferred exemplifying embodiment thereof. It will be obvious, however, that the illustrated embodiment can be modified in many ways within the scope of the invention defined in the following Claims. For example, the bands and the rings forming the fastening connections may be switched, and the two bottom rings 21 can be replaced with a single ring 21, analogous with the ring 26, and, of course, the ring 26 can be replaced with two separate rings for coaction with a respective toggle on the bottom fastener parts 3.

The adjuster 14 is well known to the person skilled in this art and therefore does not need to be described in detail here.

I claim:

1. A child-supporting shoulder harness comprising two mutually joined looped straps (1) for extending around both shoulder regions of a wearer, and a child-supporting flap (2) having two sides each of which is releasably connected to one of the looped straps (1) both at the top and at the bottom of each of the two sides, such as to form a child-supporting pouch, wherein fastening connections (3, 11) between the looped straps (1) and an upper part of the child-supporting flap (2) at both sides thereof can be released completely so as to enable the flap to be lowered around a bottom connection (3, 21) of the flap with the straps (1), wherein connections (3, 21) between each looped strap (1) and a lower part of the flap (2) are releasable, whereby the flap can be released from the looped straps (1); and in that the looped straps (1) are mutually joined on a rear side of the harness and remain looped when putting on the harness and when the child supporting flap is released to an open position.

2. A harness according to claim 1, characterized in that edges (25) of the sides of the child-supporting flap (2) are free.

3. A harness according to claim 1, characterized in that the bottom of the flap (2) is connected to the looped straps by means of releasable fasteners (3, 21; 3, 26).

4. A harness according to claim 1, characterized in that the looped straps (1) cross on the rear side of the wearer.

5. A harness according to claim 1, characterized by adjustment means (14) provided on the looped straps in a region between a respective arm and side of the wearer, such as to enable length of the respective straps to be adjusted.

6. A harness according to claim 1, wherein the mutually joined looped straps are adjustable in length.

7. A harness according to claim 6, wherein each of said looped straps includes a free end extending downwardly located in a side for tightening the respective looped strap.

8. A child-supporting shoulder harness comprising two mutually joined looped straps (1) for extending around both shoulder regions of a wearer, a child-supporting flap (2) having two sides each of which is connected ton one of the looped straps (1) both at the top and at the bottom of each of the two sides, such as to form a child-supporting pouch, wherein fastening connections (3, 11) between the looped straps (1) and an upper part of the child-supporting flap (2) at both sides thereof can be released completely so as to enable the flap to be lowered around a bottom connection (3, 21) of the flap with the straps (1), characterized in that the connection (3, 21) between one looped strap (1) and a lower part of the flap (2) is releasable, whereby the flap can be released from one looped strap (1) so as to enable the harness to be opened on a chest side of the harness; and in that the looped straps (1) are mutually joined on the rear side of the harness and remain looped when the child supporting flap is released to an open position;

wherein edges (25) of the sides of the child-supporting flap (2) are free; and

gaps defined between the free side edges of the flap (2) and respective looped straps (1) below the top connections of the flap form openings for legs of the child.

9. A child-supporting shoulder harness comprising two mutually joined looped straps (1) for extending around both shoulder regions of a wearer, a child-supporting flap (2) having two sides each of which is connected to one of the looped straps (1) both at the top and at the bottom of each of the two sides, such as to form a child-supporting pouch, wherein fastening connections (3, 11) between the looped straps (1) and an upper part of the child-supporting flap (2) at both sides thereof can be released completely so as to enable the flap to be lowered around a bottom connection (3, 21) of the flap with the straps (1), characterized in that the connection (3, 21) between one looped strap (1) and a lower part of the flap (2) is releasable, whereby the flap can be released from one looped strap (1) so as to enable the harness to be opened on a chest side of the harness; and in that the looped straps (1) are mutually joined on the rear side of the harness,

wherein the bottom of the flap (2) has provided thereon vertically spaced points of connection (21, 26) with the looped straps (1), so as to enable the child-supporting pocket to be adapted to children of different sizes.

10. A child-supporting shoulder harness comprising two mutually joined looped straps (1) for extending around both shoulder regions of a wearer, a child-supporting flap (2) having two sides each of which is connected to one of the looped straps (1) both at the top and at the bottom of each of the two sides, such as to form a child-supporting pouch, wherein fastening connections (3, 11) between the looped straps (1) and an upper part of the child-supporting flap (2) at both sides thereof can be released completely so as to enable the flap to be lowered around a bottom connection (3, 21) of the flap with the straps (1), characterized in that the connection (3, 21) between one looped strap (1) and a lower part of the flap (2) is releasable, whereby the flap can be released from one looped strap (1) so as to enable the harness to be opened on a chest side of the harness; and in that the looped straps (1) are mutually joined on the rear side of the harness,

wherein the releasable connections (3, 21); (3, 11) between supporting flap and the looped straps have a fastening which includes a ring (11; 21) connected to one part, a band (32) connected to another part, a free end of which is provided with a preferably elongated toggle (35) for coaction with the ring (11; 21), and in that the band (32) is provided along a length thereof with two mutually separate and mutually coacting fastener elements (33, 34) of a press-stud type, such that the strap will form a closed loop (36) through the ring.

11. A child-supporting shoulder harness comprising two mutually joined looped straps (1) for extending around both shoulder regions of a wearer, a child-supporting flap (2) having two sides each of which is connected to one of the looped straps (1) both at the top and at the bottom of the two sides, such as to form a child-supporting pouch, wherein fastening connections (3, 11) between the looped straps (1) and an upper part of the child-supporting flap (2) at both sides thereof can be released completely so as to enable the flap to be lowered around a bottom connection (3, 21) of the flap with the straps (1), characterized in that the connection (3, 21) between one looped strap (1) and a lower part of the flap (2) is releasable, whereby the flap can be released from a looped strap (1) so as to enable the harness to be opened on a chest side of the harness; and in that the looped straps (1) are mutually joined on the rear side of the harness,

wherein the flap (2) includes a neck-support part (7) which extends up beyond the level of the fastening connections (3, 11) of said flap; in that the neck-support part is provided along its side (28) with fastener elements (23) for releasably fastening said neck-support part to the two looped straps (1) so as to stabilize said neck-support part (27).

12. A harness according to claim 11, characterized in that the neck-support part (27) can be folded down; and in that the looped straps (1) have fastener elements (12) for releasably fastening the straps to mutually registering fastener elements (24) on the neck-support part, such as to releasably hold the neck support in its downwardly-folded position.

13. A harness according to claim 11, characterized in that the child-supporting flap (2) has lateral recesses (22) for accommodating arms of the child.

* * * * *

US005732861A

United States Patent [19]

Jakobson

[11] Patent Number: 5,732,861

[45] Date of Patent: Mar. 31, 1998

[54] **BABY CARRYING HARNESS AND CLASP MEANS THEREFOR**

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[73] Assignee: **Baby Björn AB**, Täby, Sweden

[21] Appl. No.: **669,735**

[22] Filed: **Jun. 26, 1996**

[30] **Foreign Application Priority Data**

Jul. 3, 1995 [SE] Sweden 9502414-7

[51] **Int. Cl.**[6] **A61G 1/00**

[52] **U.S. Cl.** **224/160**; 224/158; 24/589

[58] **Field of Search** 224/158, 159, 224/160, 161; 24/589

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Primary Examiner—Henry J. Recla
Assistant Examiner—Gregory M. Vidovich
Attorney, Agent, or Firm—Evenson, McKeown, Edwards & Lenahan, PLLC

[57] **ABSTRACT**

A clasp includes a bar lock and two insert locks arranged adjacent thereto. The bar lock includes upper and lower generally horizontal frame members and two mutually parallel and generally vertical side frame members, and a bar having ends which are shape-bound connected for movement of the bar along respective side members. Each of the insert locks includes an insert tongue and a tongue-receiving sleeve having a through-penetrating opening in one main wall of the sleeve. The sleeves are attached to the upper of the two generally horizontal frame members. The insertion directions of the sleeves converge towards the longitudinal center region of the upper bar-lock frame part. The clasp finds use in enabling adjustments to be made to a lower belt-like end-part of a carrier piece of a baby's carrier which comprises generally two closed strap loops which are mutually fastened on the rear side of the carrying person. The front side of the strap loops carry the latching tongues of the insert locks. The two side-edge parts of the carrier piece are connected to upper fastener points on respective loops by means of releasible connections.

8 Claims, 3 Drawing Sheets

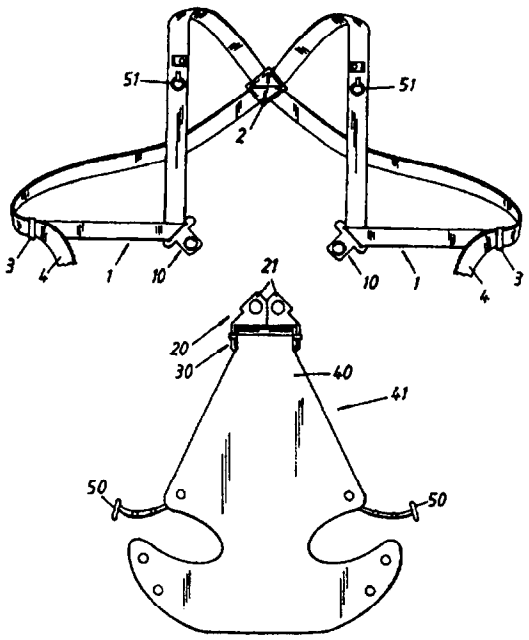

Fig. 1

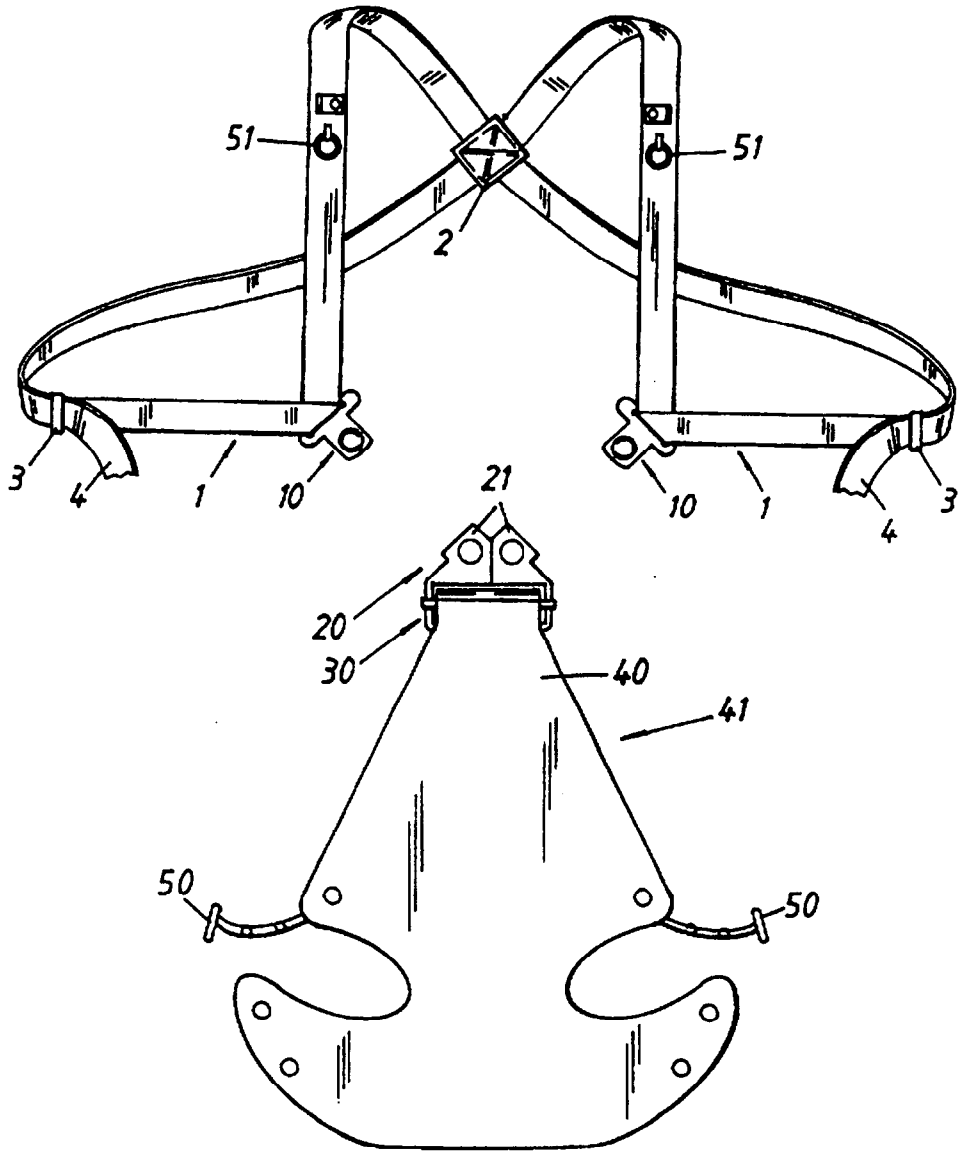

Fig. 2

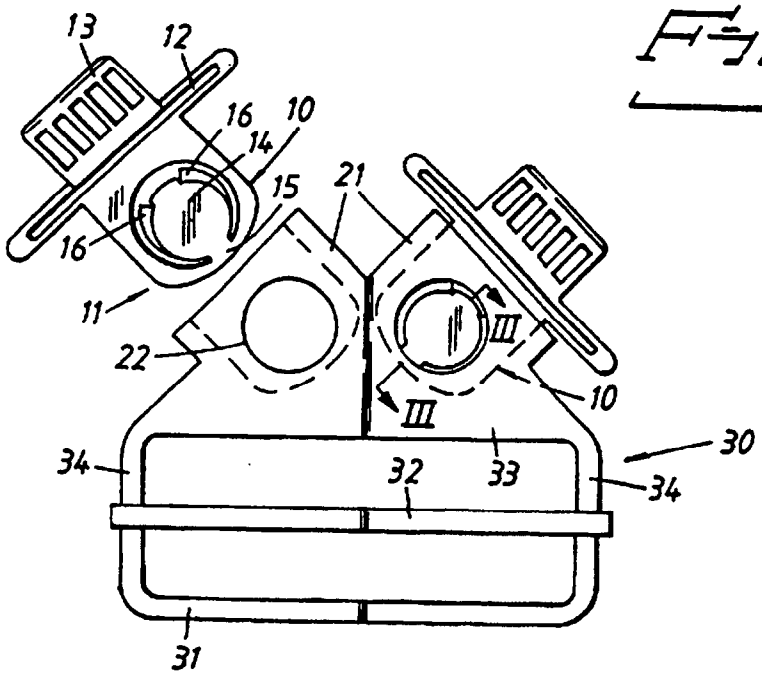
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Fig. 3

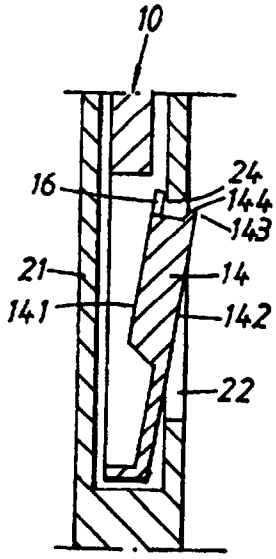
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Fig. 4

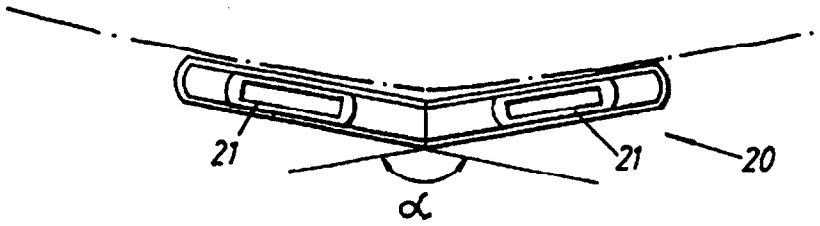
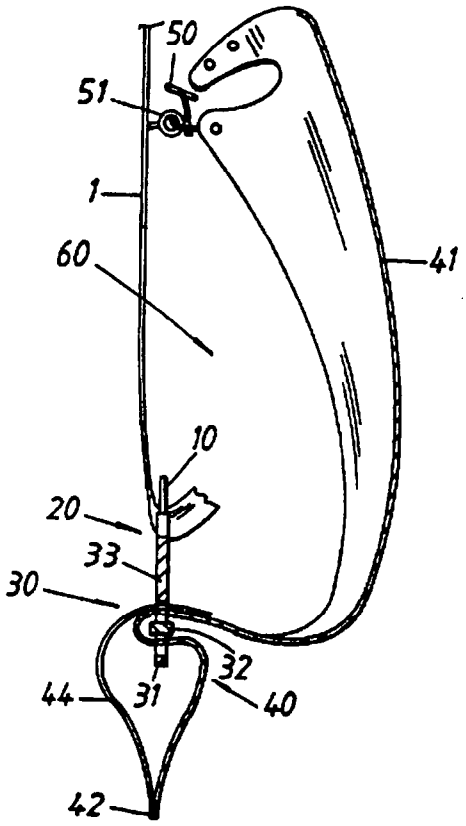


Fig. 5



BABY CARRYING HARNESS AND CLASP MEANS THEREFOR

BACKGROUND OF THE INVENTION

1. Field of the Invention

This invention relates to a baby or infant carrying harness, hereinafter referred to as a baby carrier, and to a clasp.

2. Description of Related Art

International Publication WO-92/12656 discloses a baby carrier which includes two closed strap loops which are mutually connected on the rear side of the carrying person. The loops are detachably connected on the carrying person's front side to top and bottom attachment points on a carrier piece which forms a carrier pouch on the front side of the baby carrier. The carrier piece is provided with two longitudinally spaced attachment points at the bottom of the piece, so as to enable the pouch to be adjusted to two predetermined different depths.

The connections taught by this publication have the form of a metal ring, which is connected to one part, and a duffel fastener, which is connected to the other part via an anchoring strap. The anchoring strap also has two mutually coactable press-button coupling members. Fastener means of this kind are highly expensive, due partly to the cost of the individual components, and partly due to the cost of securing the components to the baby carrier. Furthermore, the pouch can only be adjusted to two different depths. There is also a tendency for the fastener devices (the rings/duffel fasteners) to be clamped or squeezed against the carrying person's chest and cause discomfort.

SUMMARY OF THE INVENTION

Accordingly, it is an object of the present invention to replace, in baby carriers of this kind, the fastener devices that are located between the bottom part of the carrier piece and the strap loops with a clasp means that can be produced at relatively low costs, which enables the depth of the pouch to be adjusted continuously, and which has a construction that reduces the risk of discomfort due to clamping or squeezing.

The object is achieved according to the present invention.

Because of the inventive design of the clasp means, the clasp means can be conveniently placed centrally on the chest of the carrying person, immediately beneath the rib cage/breastbone, by virtue of the generally triangular shape of the clasp, which enables the clasp to fit snugly in the region beneath the breastbone/rib cage. The risk of the clasp being squeezed against the chest and therewith causing discomfort can be reduced by making the clasp thin and giving the clasp a uniform thickness and a slight concave arched shape on the side thereof proximal to the carrying person's body when the carrier is worn. A clasp of this design is well-suited for use by a carrying person whose stomach inclines naturally downwards and inwards centrally from the breastbone/rib cage region.

Because the clasp comprises, in principle, a clasp body which is provided with three locks, namely two snap-in insert locks and a so-called bar lock which affords adjustable length connection to the lower strap part of the baby carrier, the clasp means obtains a particularly compact design while, at the same time, the snap-in insertion locks are well protected against an intentional release while still being easily reached when wishing to release the same.

The particular construction of the insert locks affords excellent high bearing safety. The general construction of the baby carrier also counteracts the risk of the baby carrier letting the baby falling to the floor should one insert lock be unintentionally released, because the closed strap loop associated with this lock will then tend to be drawn firmly up over the shoulder region of the carrying person, whereas the other closed strap loop will tend to slide from the other shoulder region of said carrying person under the influence of the baby's weight.

The bar-type lock enables the lower strap-like part of the carrier pouch to be adjusted continuously to a desired length and thus enables the effective depth of the carrier pouch to be adjusted continuously. In order to avoid the risk of the lower strap-like part of the carrier piece being released from the bar lock, the end of the strap-like piece is connected to the clasp body and then to the lower generally horizontal frame element of the bar lock. The frame element extends generally parallel to the bar.

The insert locks are preferably placed on the upper side of the bar lock and directed upwardly/obliquely outwards so as to diverge from one another for connection to a respective closed strap loop on the baby carrier.

Located between each strap loop and respective adjacent upper side-edge regions of the carrier piece is a detachable connection, for instance a connection of the type disclosed in WO 92/12656.

According to one preferred embodiment of the invention, the clasp insert locks are constructed such that the forwardly rounded flat insert tongue has a centrally located aperture which has located therein a latching tongue which is connected to the insert tongue solely at its forward end as seen in the insert direction. The latching tongue is slightly oblique to the plane of the insert tongue.

The insert sleeve corresponding to the tongue includes, in one main wall, an opening in which the latching tongue is exposed. The latching tongue is able to spring out so that its free edge part will be aligned with the adjacent opening wall edge in the opening in the sleeve wall. Retraction or withdrawal of the latching tongue will be prevented until the latching tongue is pressed manually inwardly of the main wall surfaces of the insert tongue, for instance, with the aid of a finger. According to the invention, the insert lock has been further developed by providing the latching tongue with a latching lip which prevents the insert tongue from being swung out through the opening as a result of contact with the inside of the main lock wall adjacent the edge of the opening. The rear edge part of the latching tongue is provided, on the surface thereof exposed in the opening in the latching tongue, with a shoulder which, when the insert tongue is subjected to a withdrawal load, hooks over the outer opening edge of the sleeve. The latching tongue is locked by virtue of the flange and the shoulder gripping over the inner and outer edge of the sleeve opening.

The clasp is preferably injection-moulded from plastic material, and the insert locks are placed generally perpendicular to one another and at an angle of 45° to a clasp symmetry plane. The insert locks are preferably placed as close together as possible, and as close as possible to the bar lock.

The insert locks may take a generally flat shape so that the two symmetrical halves of the clasp are mutually spaced apart at an angle of 20° around the intersection of the symmetry plane with the clasp. This angling configuration changes to a generally rounded shape in the clasp bar lock so that the bar may follow an arcuate path, as can the bar-lock frame parts that extend parallel with the bar.

BRIEF DESCRIPTION OF THE DRAWINGS

The invention will now be described in more detail with reference to an exemplifying embodiment thereof and also with reference to the accompanying drawings, in which

FIG. 1 illustrates an inventive baby carrier;

FIG. 2 illustrates schematically a clasp for use with the baby carrier shown in FIG. 1;

FIG. 3 is a schematic section view taken on the line III—III in FIG. 2;

FIG. 4 illustrates the baby carrier clasp schematically from above; and

FIG. 5 is a sectioned vertical view of the baby carrier and baby carrier clasp as worn by a carrying person in which the section is defined by the symmetry plane of the carrying person.

DESCRIPTION OF THE PREFERRED EMBODIMENT

The baby carrier illustrated in FIG. 1 includes two closed strap loops 1 which are connected together on the rear side of the carrying person by means of a fastener means 2. In the illustrated case, the strap loops 1 may be formed by a single strap loop which has been twisted into a figure-eight configuration and connected to the fastener 2 at the point of loop intersection.

Each loop 1 is provided with a conventional adjusting buckle 3, wherein a strap end 4 extends forwardly and downwardly from the region of the carrying person's waist in his/her hip region to enable the size of respective loops 1 to be reduced by pulling forwards on the strap ends 4.

Each of the loops 1 has an insert tongue 10 for releasable attachment to a clasp 20 which is intended to be placed on the front of the carrying person, against the wall of the stomach immediately beneath the sternum/rib cage. The generally triangular clasp 20 has sleeves 21 for receiving respective tongues 10. Provided on the lower part of the clasp is a bar lock 30 which enables the length of the "lower" strap-like end-part 40 of a carrier piece 41 to be adjusted lengthwise. The carrier piece 41 carries on each side of its other end a respective fastener means 50 which can be releasably connected to corresponding fastener means 51 on the front side of the carrying person in an upper chest region of the strap loops, so that the carrier piece 41 will thus form a carrier pouch 60 as illustrated schematically in FIG. 5. The strap part 40 extends outwardly and inwardly through an upper opening or slot defined in the bar lock between the upper bar-lock member 33 and the bar 32, and from there extends inwardly and outwardly through the opening or slot defined between the bar 32 and the lower frame member 31. Referring to FIG. 5, it will be seen that the weight of a baby on the supporting pouch formed by the carrier piece 41 will cause the strap part 40 of the carrier piece 41 to lock in the bar lock. It will also be seen that the effective depth of the pouch 60 can be easily adjusted by adjusting the free length of the part 40 from the bar lock 30. Provided on the inside of the strap part 40 is a strap 44 which extends in the longitudinal direction of the strap part 40. The lower end of the strap 44 is fastened to the free end-part 42 of the strap part 40 and its other end is fastened to opposite ends of said strap part 40. The strap 44 and the strap-part 40 form a loop which embraces the lower bar-lock member 31, such as to prevent the strap part 40 from leaving the bar lock. The ends of the strap 44 are preferably sewn to the strap part 40, wherein the strap 44 and the strap 40 have generally equal lengths between their respective fastening points. The strap 44 is preferably placed centrally on the strap part 40 and may be much narrower than said strap part.

Referring now to FIGS. 2 and 3, it will be seen that the sleeves 21 are placed as close together as possible and as close as possible to the frame 33 of the bar lock 30. The front end 11 of each tongue 10 is inserted into its associated sleeve 21. The rear parts of the tongues have loop-receiving slots 12 and a sew-on grids 13. The strap parts on each side of a slot 12 are laid flat against each other with the grid 13 placed therebetween, whereafter the straps and the grid are sewn together. Because the grid has the form of a frame with inner parallel posts which extend in the tongue insertion direction and transversely to the direction of the holding seams, stable fixation of the tongue 10 to the loop is ensured with negligible risk of damaging the sewing needle in the course of sewing; the posts in the grid may be extremely narrow, for instance 1 mm, and spaced far apart, e.g. 4 mm, and may also have a length of about 1 cm for instance, so as to reduce the precision with which the seams need to be positioned. The tongue is provided centrally with a latching tongue 14 which is connected to the front part 11 of the tongue 10 via a bridge 15, whereas the remainder of the latching tongue 14 is free from the insert tongue 10, so as to enable the latching tongue 14 to be swung about the bridge 15 into and out of the plane defined by the insert tongue.

As will be seen from FIG. 3, the latching tongue 14 has a normal position which is angled outwards from the plane of the tongue 10. The sleeve 21 is provided on its exposed side with an opening 22 which is slightly larger than the latching tongue 14, such that the tongue 14 will spring out through the opening 22.

The latching tongue 14 has a thin lip 16 which connects with the rear surface 141 of the tongue 14, and which extends behind the edge of the opening 22 when the tongue 10 is inserted into the sleeve 21 and the latching tongue 14 is latched against the edge of the opening 22. The edge region 143 of the latching tongue 14 is diametrically opposed to the bridge 15 and the outside 142 of the tongue 14 has a wedge-shaped edge part 144 that can pass the edge of the opening and which is located outside the outer edge-surface 24 of the opening 22. When the tongue 10 is subjected to a pulling force in the longitudinal direction of the insert lock, the outer edge-surface 24, of the opening 22 will thus be received between the edge-part 143 and the lip 16, at the same time as the tongue 10 is guided between the two mutually opposing main walls of the sleeve. This enables the latching tongue 14 to be prevented from withdrawing into the sleeve interior or out through the opening 22 in the event of a strong pulling force.

The opening 22 is sufficiently large for a carrying person to finger-actuate the latching tongue 14 so as to push said tongue resiliently inwardly of the inner surface of the sleeve wall in which the opening 22 is provided, whereafter the tongue 10 can easily be drawn back again.

In addition to the frame parts 31, 33, the bar lock 30 typically includes side frame-parts 34 which form guides around which the eye-shaped end-parts of the bar 32 engage.

The clasp illustrated in FIG. 2 has a generally flat shape, although it is preferably angled slightly around an axis forming the intersection line between the plane of FIG. 2 and the symmetry plane of the clasp shown in said Figure, such that the angle α between the two symmetry halves is about 160°.

In one embodiment of the invention, the bar lock has a width of about 10 cm and the upper part of the clasp including the insert locks has a generally triangular shape, wherein the two smaller sides define an angle of about 45° to the upper frame part 33 of the bar lock 30. The concave side of the clasp is intended to lie against the carrying person's body in the upper part of the stomach, immediately beneath the rib cage/breastbone, wherein the clasp affords

good comfort even for carrying persons whose upper body shape and stomach profile decrease in a direction downwardly from the breastbone level, such as small and/or slender women, particularly women that have a slim waistline.

FIG. 1 can be considered to show the baby carrier with the insert tongues **10** separated from their respective sleeves **21** in the clasp **20**, with the sleeves **21** being turned generally upwards and the bar lock **30** turned downwards, wherein the carrier piece **41** is shown hanging from the bar lock with the fastener devices **50** released from their counterparts **51** on the strap loops **1**.

An important feature of the clasp is that it permits the tongues to be connected securely, i.e. with the strap loops close together on the carrying person's chest, and enables the baby to be held more firmly. Another important feature is that the latching locks are reliable and yet easy to reach and release. The bar lock enables the size of the pouch to be adjusted, wherein the belt still ensures positive attachment of the strap part **40** to the clasp.

I claim:

1. A baby carrier comprising:

two closed strap loops which are mutually connected at a point, the strap loops adapted to extend around respective shoulder regions of a user such that the point is located on a rear side of the user,

a carrier piece which is connected to the strap loops both at an end part of the carrier piece and at laterally spaced sides of the carrier piece so as to form a baby supporting pouch,

a pair of insert tongues secured to said strap loops,

releasable fasteners providing connections between the strap loops and the laterally spaced sides of the carrier piece which, when released, enable the carrier piece to be dropped down fully around its end part, and

a clasp secured to said end part of said carrier piece and including sleeves for respectively receiving said insert tongues so that said insert tongues are releasably interlocked with said clasp and a bar lock by which a free length of the end part of the carrier piece is adjustable.

2. A baby carrier according to claim **1**, wherein the insert tongues are inserted into said sleeves in insertion directions which form a right angle and wherein the sleeves are placed closely adjacent to an upper frame element defining a portion of the bar lock.

3. A baby carrier according to claim **1**, wherein each of the insert tongues has a latching tongue which is adapted to spring out into engagement with an edge of an opening that penetrates through one main wall of one of the sleeves when the insert tongue is fully inserted into said one of the sleeves.

4. A baby carrier according to claim **3**, wherein a rearwardly facing end-part of the latching tongue has a lip which is engageable with the one main wall to prevent the latching tongue from protruding out through the opening and the latching tongue has, on said rearwardly facing end-part, a flange which is intended to prevent the latching tongue from being moved to a position within the one main wall when the insert tongue is subjected to a pulling force by one of said strap loops.

5. A baby carrier according to claim **1**, wherein the bar lock includes an upper frame member, a lower generally horizontal frame member, two mutually parallel and generally vertical frame side members, and a bar having ends which are connected to said side members for movement up and down.

6. A baby carrier according to claim **5**, wherein the clasp has a central symmetry plane which extends perpendicularly to the bar of said bar lock and between the sleeves of said clasp and wherein halves of the clasp defined by said central symmetry plane are generally flat.

7. A baby carrier according to claim **6**, wherein the halves mutually intersect at an angle of about 20° and the sleeves are located on a convex side of the clasp.

8. A baby carrier according to claim **5**, and further comprising a safety strap having ends attached to said carrier piece and defining, together with said end part of said carrier piece, a loop which surrounds said lower generally horizontal frame member.

* * * * *

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Baby Bjorn AB

Serial No.: 75/751554

Trademark: Design of Baby Carrier

Examiner: Sue Carruthers, Esq.

Law Office: 108

Filing Date: July 15, 1999

DECLARATION OF ACQUIRED DISTINCTIVENESS UNDER TRADEMARK ACT SECTION 2(f)

The undersigned declares:

(a) That he/she is authorized to execute this Declaration on behalf of said Applicant, and

(b) That the applicant on the above date filed application for registration of the above trademark under the above indicated Serial No., and

(c) That the mark is claimed to have become distinctive of Applicant's goods through Applicant's substantially exclusive and continuous use thereof as a mark in commerce which may be lawfully regulated by Congress since at least as early as July 4, 1991, a period exceeding five years prior to the date of the execution of this declaration, and

(d) That all statements made on his/her own knowledge are true and that all statements made on information and belief are believed to be true and, further, these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

Björn Jakobson
Signature

BJÖRN JAKOBSON
Name

Title:

30.1.2001
Date

TOTALT ANT. SID 02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Baby Björn AB

Serial No.: 75/751554

Trademark: Design of Baby Carrier

Examiner: Catherine K. Krebs, Esq.

Law Office: 108

Filing Date: July 15, 1999

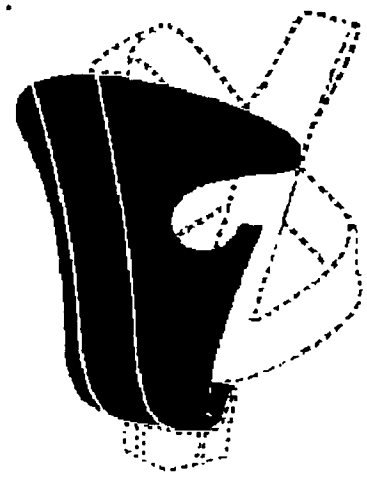
DECLARATION OF ACQUIRED DISTINCTIVENESS
UNDER TRADEMARK ACT SECTION 2(F)

The undersigned declare collectively as follows:

1. We are employees of Baby Björn AB, (hereinafter "Applicant") and make this declaration in the belief that the carrier pouch configuration for which trademark registration is sought has become distinctive as an indicator of source for Applicant's baby carriers.

2. We have access to, and are familiar with, the business records concerning Applicant's marketing and sales of baby carrier products bearing the trademark configuration.

3. Applicant has been producing, marketing and selling since at least as early as July 4, 1991 baby carriers bearing the applied-for configuration in U.S. commerce, namely, that shown below (hereinafter, "Baby Carrier"):



Applicant also produces, markets and sells a wide variety of other types of related merchandise, including baby bibs, toilet trainers, toys, baby eating utensils and diaper bags.

4. Applicant's Baby Carriers can be found at major department stores and retail boutiques and outlets throughout the United States. Applicant has advertised through the United States its Baby Carriers through a variety of publications, including, among others, American Baby, Childbirth, New Parent Magazine, Lamaze, Fit Pregnancy, Baby Talk, and Pregnancy. Photocopies of selected advertisements from such publications are submitted as Exhibit E.

5. From 1992 through October 9, 2002, U.S. sales of Baby Björn Baby Carriers exceeded 1 million units, approximately as follows:

Year	Units Sold
1992 (5/92-4/93)	1,000
1993 (5/93-4/94)	4,000
1994 (5/94-4/95)	16,500
1995 (5/95-4/96)	40,000
1996 (5/96-4/97)	58,500
1997 (5/97-4/98)	75,000
1998 (5/98-12/98)	58,000
1999 (1/99-12/99)	141,000
2000 (1/00-12/00)	183,000
2001 (1/01-12/01)	249,000
2002 (1/02-10/09/02)	222,500
Total	**1,048,000**

6. During this same period, Applicant's U.S. non-trade show advertising expenditures relating to Baby Carriers was nearly $2 million. Approximate marketing expenditures of Applicant's U.S. distributor are set forth below, approximately 90% of which relate specifically to marketing connected with Applicant's Baby Carriers:

Year	Advertising	Trade Show Expense	Annual Marketing Total
1992	$4,000	$8,000	$12,000
1993	$5,000	$10,000	$15,000
1994	$8,000	$17,000	$24,000
1995	$57,000	$14,000	$71,000
1996	$20,000	$23,000	$42,000

1997	$65,000	$42,000	$106,000
1998	$102,000	$22,000	$123,000
1999	$321,000	$34,000	$354,000
2000	$616,000	$55,000	$671,000
2001	$332,000	$31,000	$363,000
2002	$428,000	$73,000	$501,000
Total	**$1,958,000**	**$329,000**	**$2,282,000**

7. Marketing materials for Applicant's baby carrier products have consistently stressed the attractive appearance of the carriers and included photographs intended to foster consumer recognition of the carrier flap configuration as an indicator of source. As a result of Applicant's extensive advertising and promotional efforts, as well as the high quality and enormous commercial success of its baby carriers, the flared, front panel shape and dual vertical stripes of the baby carrier have become extremely well-known within the baby care industry as well as to the public, and are now recognized and relied upon as the symbol of Applicant' distinction, exclusivity and exceptional quality.

8. It is also the belief of the undersigned that the front panel shape and dual vertical stripes on Applicant's baby carriers have come to be recognized and relied upon by the

trade and purchasing public as indicating a product originating with or authorized by Baby Björn. Moreover, the trademark baby carrier configuration is unique in that there are no other like or similar marks which are registered by third parties. The flared front panel shape and dual vertical stripes are synonymous with and symbolize Applicant's reputation, and the goodwill associated with this trademark is of incalculable value and among the most valuable and important of Applicant's assets.

DECLARATION

The undersigned declares that all statements made on his/her own knowledge are true and that all statements made on information and belief are believed to be true and, further, these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

BABY BJÖRN AB

Date: 23/10 2002

By: _____
Name: Helena Liljedahl
Title: Director of Marketing

Date: 23.10.2002

By: _____
Name: Henrik Ekman
Title: Director of Sales